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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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FILE:



Office: NEW YORK

Date:

MSC 05 316 11877

SEP 30 2009

IN RE: Applicant:



APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C § 1255a.

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, or *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements) was denied by the Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not established that she resided in the United States in a continuous unlawful status from before January 1, 1982 through the date of attempted filing during the original one-year application period that ended on May 4, 1988.

On appeal, counsel for the applicant asserts that the applicant has provided sufficient evidence to establish her eligibility for Temporary Resident Status. Counsel submits additional evidence on appeal.

An applicant for temporary resident status – under section 245A of the Immigration and Nationality Act (the Act) – must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. *See* section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. *See* section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. *See* 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. *See* CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* at 80. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The applicant is a native of Ghana who claims to have resided in the United States since January 1981, and she filed an application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, on August 12, 2005.

In the Notice of Intent to Deny (NOID), dated May 2, 2007, the director stated that the applicant failed to submit sufficient evidence demonstrating her continuous unlawful residence, and continuous physical presence, in the United States during the requisite period. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated June 8, 2007, the director determined that the applicant had failed to submit sufficient evidence to establish the requisite continuous residence and denied the application. The director noted that the applicant responded to the NOID, but failed to overcome the reasons for denial stated in the NOID. The director also noted that the applicant had submitted affidavits that the director deemed not credible.

On appeal, counsel asserts that the director incorrectly determined that the evidence submitted was insufficient to establish the applicant's eligibility. According to counsel, cumulatively, the evidence provided, which includes several affidavits submitted with the application and in response to the NOID, and with the appeal, establishes the applicant's requisite continuous residence.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she continuously resided in the United States in an unlawful status from before January 1, 1982 through the date she attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. After reviewing the entire record, the AAO determines that she has not.

Contrary to counsel's assertion, the applicant has provided affidavits that are not credible. In an attempt to establish her continuous residence, the applicant has submitted numerous letters and affidavits attesting to her continuous residence during the requisite period. The applicant furnished several form affidavits, including affidavits from [REDACTED].

[REDACTED] and [REDACTED]. The affiants attest to the applicant's residence in the United States during the requisite period. However, the affiants do not provide details, such as how they date their acquaintance with the applicant, and whether and how they maintained contact with the applicant since their acquaintance.

In addition, several of the affidavits are questionable. For example, [REDACTED] and [REDACTED] attest that they first became acquainted with the applicant in May 1981; [REDACTED] attests that he first became acquainted with the applicant in October 1981; [REDACTED] attests that he first became acquainted with the applicant in June 1981; [REDACTED] attests that he first became acquainted with the applicant in January 1985; [REDACTED] attests that he first became acquainted with the applicant in July 1985; [REDACTED] and [REDACTED] attest that they first became acquainted with the applicant in April 1987, and in 1987, respectively; and, [REDACTED] attests that he first became acquainted with the applicant in October 1989. Yet, all of these affiants also attest that to their "personal knowledge" the applicant resided at [REDACTED] Bronx, New York 10457, from January 1981 to August 1993. However, none of the affiants provide any basis for their "personal knowledge" of the applicant's residence since January 1981 prior to their acquaintance with the applicant.

Another example, [REDACTED] attests that the applicant is his sister, and that he is "able to determine that [the applicant] has resided in the United States of America since [his] wedding celebration on [in] October 1987." [REDACTED] does not indicate that the applicant ever resided in the United States prior to 1987. The applicant's own brother attests to her residence in the United States since 1987 only. Yet, numerous other affiants, none of whom indicate as close a relationship as her sibling, attest to the applicant's residence since January 1981, but do not provide evidence of the basis of their attestation that the applicant has resided in the United States since January 1981. There is a significant gap of about six (6) years between January 1981 and 1987, and it is reasonable to expect that the applicant's own brother would have more accurate information specific to when the

applicant's residence in the United States commenced than would other affiants who are not so closely related.

As another glaring discrepancy, [REDACTED] attests that he first met the applicant in January 1981 at her [the applicant's] birthday party. However, the applicant indicates on her Form I-687 and supporting documentation, that her date of birth is April 3, 1962. It is unlikely, therefore, that the affiant would have met the applicant at the applicant's birthday party in the month of January 1981, as the affiant claims.

Additionally, it is noted that the affiants do not provide sufficient details of their claimed acquaintance with the applicant. For example, [REDACTED] attests that he has known the applicant since 1983. [REDACTED] also attests that he was introduced to the applicant by two of his friends, and he has since had a "lasting friendship" with the applicant who has always been "trustworthy." [REDACTED] also attests that the applicant has assisted him in planning cultural events and has volunteered for "hospitality management" in his business. [REDACTED] however, does not indicate how he dates his acquaintance with the applicant; whether and where he first became acquainted with the applicant in the United States; when and how frequently the applicant assisted him in planning cultural events and volunteered for hospitality management in his business; and, whether and under circumstances he had any additional contact with the applicant since their acquaintance.

This complete lack of reliable evidence casts doubt on whether the applicant has resided in the United States since January 1981, as she claims. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in her testimony and in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that she continuously resided in the United States in an unlawful status during the requisite period.

The applicant submitted a letter from [REDACTED], of The Holy Church of God, Blessing, located at [REDACTED] New York, New York, 10030. [REDACTED] attests that the applicant has been a member of the church since 1981, and that the applicant also worked as babysitter for his sons, from 1981 to "around 1987."

It is noted however, that as a letter of employment, the letter failed to provide the applicant's address at the time of employment, show periods of layoff, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable as required under 8 C.F.R. § 245a.2(d)(3)(i). The letter, is therefore, not probative as evidence of the applicant's employment as it does not conform to the regulatory requirements.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to.

The letter from The Holy Church of God, Blessing does not comply with the above cited regulations because it does not: state the address where the applicant resided during attendance ... (membership) ... period; establish in detail that the author knows the applicant and has personal knowledge of the applicant's whereabouts during the requisite period; establish the origin of the information being attested to; and, that attendance (membership) records were referenced or otherwise specifically state the origin of the information being attested to. For this reason, the letter is not deemed probative and is of little evidentiary value.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification.

Thus, the record does not establish that the applicant entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from that date through the date she attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A(a)(2) the Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.